



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ŠEBALJ v. CROATIA

(Application no. 4429/09)

JUDGMENT

STRASBOURG

28 June 2011

FINAL

28/09/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Šebalj v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Anatoly Kovler, *President*,

Nina Vajić,

Peer Lorenzen,

Khanlar Hajiyeu,

George Nicolaou,

Julia Laffranque,

Linos-Alexandre Sicilianos, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 June 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 4429/09) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Croatian national, Mr Zoran Šebalj (“the applicant”), on 25 March 2009.

2. The applicant was represented by Ms L. Horvat and Mr S. Radobuljac, lawyers practising in Zagreb. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

3. On 8 June 2010 the President of the First Section decided to give notice to the Government of the complaints under Article 3, Article 5 §§ 3 and 4, and Article 6 §§ 1 and 3(c) of the Convention. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). On 18 January 2011 the President of the First Section gave notice of further complaints, under Article 5 §§ 1 and 4 and Article 6 § 1 of the Convention, and the Government were invited to submit the relevant practice of the Supreme Court on the question of the lawfulness of the applicant’s detention after 19 June 2008.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1971 and lives in Zagreb.

5. The documents in the case file reveal the following facts.

A. The three sets of proceedings joined under case file no. Ko-824/08*1. Criminal proceedings conducted under case file no. Ko-219/06*

6. On 21 September 2005 the applicant was arrested in connection with a suspicion that he had committed several acts of theft. He was released on 22 September 2005.

7. On 23 January 2006 the Zagreb Municipal State Attorney's Office preferred charges against the applicant in the Zagreb Municipal Court on two counts of aggravated theft in the period between 1 and 4 July 2005 and on 11 and 12 September 2005.

8. A hearing scheduled for 6 April 2006 was adjourned at the applicant's request because he wanted to find legal representation.

9. A hearing scheduled for 8 June 2006 was adjourned owing to the applicant's absence. In a submission of the same day the applicant informed the presiding judge that he was in pre-trial detention in connection with some other criminal proceedings against him.

10. At a hearing scheduled for 2 October 2006 the applicant was summoned through the Zagreb Prison authorities but he was not brought to the hearing because he had been released on 26 June 2006.

11. The presiding judge ordered the police to bring the applicant to a hearing scheduled for 21 November 2006, but this order was not complied with. On 28 November 2006 the police informed the presiding judge that the applicant did not live at his registered address.

12. On 1 December 2006 the presiding judge asked the Central Prison Administration whether the applicant was placed in any penal institution in Croatia. On 4 January 2007 the Central Prison Administration answered that that was not the case.

13. On 16 July 2007 the proceedings at issue were joined with the criminal proceedings nos. Ko-2965/06 and Ko-2403/07 (see below, §§ 56 and 68).

14. On 4 August 2007 the applicant submitted a letter of authority for his defence lawyer, J.N.

15. A hearing was held on 12 September 2007 in the presence of the applicant and his defence lawyer.

16. The applicant had already been placed in detention on 19 June 2007, pursuant to a detention order of 22 May 2007, issued in the proceedings conducted under the case file no. 2403/07 (see below, §§ 62 and 63). On 28 September 2007 a three-judge panel of the Zagreb Municipal Court extended the applicant's detention on the grounds under Article 102 § 1(1) (fear of absconding) and 1(3) (fear of reoffending) of the Code of Criminal Procedure. The reasoning was essentially the same as in the decision extending the applicant's detention of 12 July 2007 (see below, § 67).

17. On 1 October 2007 the applicant lodged an appeal arguing firstly that the first-instance decision had not specified the period of detention covered by it and that his detention between 19 August and 28 September 2007 was not covered by any decision, and secondly challenging the grounds for his detention on the ground that he could live with the family D. and that he had not committed any criminal offence in the past year.

18. A hearing was held on 4 October 2007 in the presence of the applicant and a defence lawyer.

19. On 5 October 2007 the Zagreb County Court dismissed the applicant's appeal of 1 October 2007 finding that he had no address to which the courts could send him a summons, since the police had established that I.D., the owner of the flat at the address indicated by the applicant stated that the applicant was a friend of his son but had never lived with them. The appeal court accepted the grounds for detention put forward by the first-instance court. It made no comments on the applicant's argument that his detention in the period between 19 August and 28 September 2007 had not been covered by any decision.

20. A hearing was held on 30 October 2007 in the presence of the applicant and a defence lawyer.

21. On 2 November 2007 the applicant lodged a request for his release submitting a written statement by I.D. that he allowed the applicant to live in his flat.

22. On 5 November 2007 a three-judge panel of the Zagreb Municipal Court extended the applicant's detention under Article 102§ 1(3) (fear of reoffending) of the Code of Criminal Procedure, and no longer for fear of absconding. It found that the applicant had already been convicted four times for theft or aggravated theft and each time sentenced to a prison term and that two further sets of criminal proceedings, also concerning charges of theft, were pending against him. Against that background and in view of the number of individual thefts concerned in the proceedings at issue, which all showed the applicant's resolve to commit criminal offences of theft, the Municipal Court concluded that there was a real danger of his reoffending.

23. On 8 November 2007 the applicant lodged an appeal arguing, in sum, that the first-instance court had relied on erroneous provisions when ordering his detention.

24. On 9 November 2007 the Zagreb County Court dismissed the appeal, endorsing the reasoning of the first-instance court.

25. A hearing was held on 21 November 2007 in the presence of the applicant and a defence lawyer.

26. On 7 December 2007 a three-judge panel of the Zagreb Municipal Court extended the applicant's detention under Article 102 § 1(3) (fear of reoffending) of the Code of Criminal Procedure. It found that the proceedings at issue concerned six different thefts and that two other sets of criminal proceedings also concerning charges of theft were pending against

him. Furthermore, he had already been convicted of theft or aggravated theft four times and each time sentenced to a prison term. Against that background the Municipal Court concluded that the applicant had shown a high degree of criminal resolve in committing thefts and that the previous convictions had not prevented him from continuing with criminal activity of the same type.

27. A hearing was held on 11 December 2007 in the presence of the applicant and a defence lawyer. The Deputy State Attorney present at the hearing withdrew charges in respect of three counts of theft. On the same day a judgment was adopted finding the applicant guilty of two counts of theft and sentencing him to one year and three months' imprisonment. In respect of the remaining charge he was acquitted. The trial panel also extended the applicant's detention under Article 102 § 1(3) (fear of reoffending) of the Code of Criminal Procedure.

28. On 17 December 2007 the applicant lodged an appeal against the decision extending his detention, challenging the grounds for his detention. The appeal was dismissed on 18 December 2007 by a three-judge panel of the Zagreb Municipal Court.

29. On 20 December 2007 the applicant's defence lawyer also lodged an appeal against the decision extending his detention, challenging the grounds for his detention. The appeal was dismissed on 20 December 2007 by a three-judge panel of the Zagreb Municipal Court.

30. On 1 January 2008 the applicant's defence lawyer lodged an appeal against the first-instance judgment. He argued that the facts of the case had been wrongly established, that the reasoning of the judgment was contradictory and that the sentence applied was too harsh.

31. On 10 January 2008 the applicant also lodged an appeal against the first-instance judgment, arguing that it had not been proven that he had committed the thefts in question. On the same day the Zagreb Municipal State Attorney's Office also lodged an appeal against the part of the judgment acquitting the applicant.

32. On 4 March 2008 the Zagreb County Court upheld the first instance judgment as regards the part finding the applicant guilty of one count of theft and quashed the remaining part of the judgment, both in the part finding the applicant guilty in respect of the other count of theft and the part acquitting the applicant of one count of theft. In that part the case was remitted for retrial. The County Court at the same time extended the applicant's detention under Article 102 § 1(3) (fear of reoffending) of the Code of Criminal Procedure. It endorsed the reasons previously put forward by the Zagreb Municipal Court.

33. The case was given a new number, Ko-824/08.

34. On 26 March 2008 the Zagreb Municipal Court appointed a defence lawyer for the applicant since his chosen lawyer ceased to represent him.

35. On 4 April 2008 a three-judge panel of the Zagreb Municipal Court again extended the applicant's detention under Article 102 § 1(3) (fear of reoffending) of the Code of Criminal Procedure, reiterating the same reasons as previously.

36. On 8 April 2008 the applicant lodged an appeal arguing that the reasons for his detention were insufficient and that the first-instance court had only repeated its previous arguments.

37. On 15 April 2008 the Zagreb County Court dismissed the appeal, endorsing the reasoning of the first-instance court.

38. On 22 April 2008 the applicant submitted a request for his release, arguing that the reasons relied on by the national courts for extending his detention were insufficient.

39. On 25 April 2008 a three-judge panel of the Zagreb Municipal Court denied the applicant's request, reiterating its previous reasons justifying the applicant's detention.

40. A hearing was held on 9 May 2008 in the presence of the applicant and his defence lawyer.

41. On 15 May 2008 a three-judge panel of the Zagreb Municipal Court extended the applicant's detention under Article 102 § 1(3) (fear of reoffending) of the Code of Criminal Procedure, reiterating the same reasons as previously.

42. On 20 May 2008 the applicant lodged an appeal arguing that the reasons for his detention were not relevant and sufficient. The appeal was dismissed on 21 May 2008 by the Zagreb County Court, which endorsed the reasoning of the first-instance court.

43. On 17 June 2008 the presiding judge sent a letter to the Zagreb Prison authorities informing them that on 19 June 2008 the maximum statutory detention in respect of the applicant would expire and that the applicant was to be released that day. However, the applicant was not released and stayed in detention on the basis of the detention order issued in another set of proceedings (see below, paragraph 72).

44. The written record of a hearing held on 7 July 2008 states that the applicant was no longer detained in connection with the proceedings at issue, but was still detained on the basis of a detention order issued in the criminal proceedings against him pending before the same court under the case file no. 3257/05.

45. On 9 July 2008 the presiding judge released from his duty the officially appointed defence lawyer because the applicant was no longer detained in connection with the proceedings at issue and therefore the applicant no longer had the right to be represented by an officially appointed lawyer. However, on the same day the President of the Zagreb Municipal Court appointed a new defence lawyer for the applicant.

46. Hearings were held on 19 September, 22 October and 8 December 2008 and 29 January, 27 February and 3 April 2009, in the presence of the

applicant and a defence lawyer. On the last mentioned date a judgment was given finding the applicant guilty of two counts of theft and sentencing him to two years and six months' imprisonment. The time he had spent in detention in connection with the proceedings at issue between 19 June 2007 and 19 June 2008 was to be included in the sentence.

47. On 11 January 2010 the applicant lodged an appeal arguing that the facts of the case had been wrongly established and that some evidence had been unlawfully obtained. He complained about his treatment during the police questioning, maintaining that after the police search of his flat on 21 September 2005 at 12.45 p.m., the police had taken a large number of items from his flat and had then taken him to the Zagreb Police Department where he was placed in a small room and forced to sit on a chair until the next morning. During all that time he was once given a sandwich and a fruit juice. On the morning of 22 September 2005 the police forced him to sign some papers. He had not been present in the office where the police officers made a list of the items allegedly taken from his flat.

48. On 13 January 2010 the defence lawyer also lodged an appeal arguing that the facts of the case had been wrongly established.

49. The proceedings are currently pending before the Zagreb County Court.

2. Criminal proceedings conducted under the case file no. Ko-2965/06

50. On 9 September 2006 at 1.30 a.m. the applicant was arrested in connection with a suspicion that he had committed a theft. He was released on the same day at 1.15 p.m.

51. On 25 September 2006 the Zagreb Municipal State Attorney's Office preferred charges against the applicant in the Zagreb Municipal Court on one count of attempted aggravated theft, allegedly committed on 8 September 2006.

52. A hearing scheduled for 18 May 2007 was adjourned owing to the applicant's absence.

53. On 1 June 2007 the Ministry of Justice informed the Municipal Court that the applicant had already been convicted four times for aggravated theft.

54. On 4 June 2007 the presiding judge asked the police to find the applicant's whereabouts. On 26 June 2007 the police informed the judge that the applicant did not live at his registered address.

55. On 4 July 2007 the police informed the Municipal Court that the applicant was in detention in Zagreb Prison.

56. On 16 July 2007 the proceedings at issue were joined with the criminal proceedings nos. Ko-2403/07 and Ko-219/06 (see above, paragraph 13).

3. Criminal proceedings conducted under the case file no. Ko-2403/07

57. On 16 October 2006 the Zagreb Municipal State Attorney's Office asked an investigating judge of the Zagreb County Court to open an investigation in respect of the applicant in connection with a suspicion that he had committed eight acts of theft, in the period between 17 July and 4 September 2006.

58. On 13 November 2006 the investigating judge asked the Vukovar County Court to hear evidence from the applicant since his registered address was on the territory under the jurisdiction of that court.

59. At a hearing held on 1 December 2006 the investigating judge heard evidence from two witnesses.

60. On 20 December 2006 the investigating judge reiterated his request of 13 November 2006. On 8 January 2007 the Vukovar County Court informed the investigating judge that the applicant did not live at his registered address.

61. On 8 February 2007 the investigating judge ordered the police to bring the applicant to a hearing scheduled for 26 February 2007 and indicated an address in Zagreb. On 27 February 2007 the police informed the investigating judge that the applicant did not live at the address indicated in his order.

62. On 22 May 2007 the investigating judge ordered the applicant's pre-trial detention under Article 102 § 1(1) (fear of absconding) of the Code of Criminal Procedure for one month. The decision was justified by the fact that the applicant did not live at his registered address and a conclusion that he was in hiding.

63. The applicant was arrested on 19 June 2007 and placed in pre-trial detention in Zagreb Prison.

64. On 20 June 2007 the investigating judge heard evidence from the applicant in the presence of an officially appointed defence lawyer.

65. On 25 June 2007 the applicant asked the investigating judge to be represented by his defence lawyer, J.N.

66. On 9 July 2007 the Zagreb Municipal State Attorney's Office preferred charges against the applicant in the Zagreb Municipal Court on three counts of aggravated theft in the period between 30 August and 8 September 2006.

67. On 12 July 2007 a three-judge panel of the Zagreb Municipal Court extended the applicant's detention on the grounds provided for under Article 102 § 1(1) (fear of absconding) and 1(3) (fear of reoffending) of the Code of Criminal Procedure. As regards the first ground the Municipal Court held that during the investigation the applicant had not been available since he had not been living at his registered address and the owner of a house at the other address he had indicated had refused to allow the applicant to live there. As regards the second ground, the Municipal Court held that the fear of reoffending was justified by the fact that the applicant

had already been convicted of theft four times, was unemployed, had no assets, and several further sets of criminal proceedings against him also on charges of theft were pending.

68. On 16 July 2007 the proceedings at issue were joined to the criminal proceedings in cases nos. Ko-2965/06 and Ko-219/06 (see paragraph 13 above).

B. The two sets of proceedings joined under case file no. Ko-3257/05

1. Criminal proceedings conducted under case file no. Ko-3257/05

69. The written record of the applicant's questioning by the police officers in the Fifth Police Station in Zagreb states that on 2 November 2005 he was questioned by the police in connection with a suspicion that he had committed several thefts. He confessed that in 2005 he had committed seven thefts in Zagreb. The written record of his interview states that it started at 12.30 p.m. and ended at 1.40 p.m. It also states that a lawyer E.Č. was called at 12.30 p.m. and was present during the questioning. The record is signed by police officer H.Č., typist S.V.F., the applicant and lawyer E.Č.

70. On 23 November 2005 the Zagreb Municipal State Attorney's Office preferred charges against the applicant in the Zagreb Municipal Court, on seven counts of theft committed in Zagreb in the period between 1 May and 6 October 2005.

71. A hearing scheduled for 21 April 2006 was adjourned because the applicant did not appear and the postal receipt indicated that he was unknown at his registered address. In their letters of 29 May and 6 October 2006 the Zagreb Police informed the Municipal Court that the applicant did not live at any of the addresses they had obtained.

72. On 20 November 2006 the President of the Zagreb Municipal Court appointed lawyer I.V. to represent the applicant. On the same day a three-judge panel of the Zagreb Municipal Court ordered the applicant's detention under Article 102 § 1(1) (fear of absconding) of the Code of Criminal Procedure for one month, from the date when the decision became final. The decision was justified by the fact that the applicant did not live at his registered address and a conclusion that he was in hiding.

73. On 23 November 2006 the Zagreb Municipal Court issued an arrest warrant in respect of the applicant and sent it to the Zagreb Police for enforcement.

74. On 28 March 2008 lawyer I.V. lodged an appeal against the decision on detention arguing that he had received the impugned decision on 25 March 2008, whilst the panel's session had taken place in November 2006. Moreover, a decision appointing him as the applicant's defence lawyer had been served on him on 17 March 2008 although it had been adopted on 20 November 2006. Thus he had not been informed of the

panel's session for a decision on the applicant's detention and had been prevented from attending it.

75. On 13 March 2008 the Zagreb Police informed the Municipal Court that the arrest warrant was not registered because the applicant had already been detained in connection with the other criminal proceedings pending against him before the same court (see below, paragraphs 62 and 63).

76. On 10 April 2008 the President of the Zagreb Municipal Court relieved lawyer I.V. of his duty.

77. At a hearing held on 14 April 2008 the applicant requested its adjournment and that a defence lawyer be officially appointed for him because he had no means to pay for his legal representation.

78. On 15 April 2008 the President of the Zagreb Municipal Court appointed lawyer D.M. to represent the applicant.

79. A hearing was held on 20 May 2008 in the presence of the applicant and his defence lawyer. The applicant denied that he had committed the thefts with which he was charged and stated that he had signed his confession to the police under duress. The relevant part of his statement reads:

"It is not true that I committed the criminal offences I am charged with. I signed the statement made at the police station under duress and after physical and mental ill-treatment. I was questioned by two police inspectors and other police officers were also coming and going during the questioning. They slapped me in the face, forced me to stand continually for two hours on my toes, not allowing me to sit down. I stayed for twenty-four hours at the Police Station in Bauerova Street and was taken to the Čnomerec Police Station only during the night. The lawyer arrived but only to sign the written record [of my questioning] and when he arrived I did not consult him. We went to another room where he asked me to pay 500 Croatian kuna, which I did, and I signed the written record of my questioning only to be let free.

To a specific question I can say that I did not see a doctor after being released because I had no visible injuries and such treatment [by the police] has become normal for me. I did not read the written record that I signed, and nor did the lawyer."

80. On 5 June 2008 the applicant asked that all criminal proceedings pending against him before the Municipal Court be joined. On 13 June 2008 the proceedings at issue were joined to the criminal proceedings in case no. Ko-2730/07, since they were at a similar stage, while the proceedings conducted under no. Ko-824/08 (see below, paragraph 140) were not joined because the hearing in those proceedings had been concluded and the judgment was in the process of being drafted.

81. Since on 19 June 2008, the statutory maximum period for the applicant's detention in connection with the criminal proceedings pending against him in the Zagreb Municipal Court under case file no. Ko-824/08 expired (see below, paragraph 43), the decision ordering the applicant's detention in the proceedings at issue of 20 November 2006 came into force.

82. On 23 June 2008 the applicant lodged an appeal against that decision arguing that the finding that he was of unknown residence was wrong since he had been in detention for the past twelve months. Relying on Article 5 § 1 of the Convention, he also argued that the maximum statutory period for his detention had expired and that in view of the inviolability of the right of liberty of person no further detention against him could be lawful. By extending his detention beyond that time-limit the Municipal Court had misapplied the rules of criminal procedure.

83. On 23 June 2008 the Zagreb County Court dismissed the appeal against the Zagreb Municipal Court's decision of 20 November 2006, lodged by lawyer I.V., but did not decide on the applicant's personal appeal of 23 June 2008. It held that the reasons for detention put forward by the Municipal Court were sufficient but made no findings as to the lawyer's argument that he was prevented from attending the panel's meeting of 20 November 2006.

84. At a hearing on 14 July 2008, the Municipal Court heard evidence from H.Ć., the police officer who interviewed the applicant on 2 November 2005. The relevant part of his statement reads:

"It is true that on 2 November 2005 I questioned the defendant in the V Police Station and I remember that all the time during the questioning a lawyer, called by my colleague K.K. from the list of lawyers kept by the police, was present. Upon the lawyer's arrival and before the questioning commenced, the lawyer was informed about the case and was left for some time alone with the defendant ...

To a question from the judge I can say that I do not remember which lawyer it was. Both the lawyer and the defendant signed the written record of questioning without making any objections.

To a question from the defence lawyer I can say that what I have just said concerns the case at issue and that I do not remember the details concerning the victims or other matters.

To a question from the judge I can say that apart from the lawyer, the defendant and me, a typist was also present and my colleague K.K. was sometimes passing by but did not attend the interview."

85. The Municipal Court also heard evidence from typist S.V.F. The relevant part of her statement reads:

"Today when I see the defendant I can say that I do not remember him or his questioning because I do it all the time.

To a question from the judge I can say that usually during the questioning of a suspect I type what a police officer is dictating to me. ... A suspect tells me his version of events and then a police officer dictates to me the suspect's defence formulated in a comprehensible manner and I type it. A police officer asks the suspect questions. When a written record is completed it is given to a suspect to read and he signs it. The same method is used when a lawyer is present. Where a written record of questioning

shows that a lawyer was present and a lawyer has signed the record it means that he was present from the beginning until the end of the questioning.

To a question from the defence lawyer I can answer that now when I see the written record of the defendant's questioning of 2 November 2005, I cannot explain why there is no mention of the time when the defence lawyer arrived.

To a question from the judge I can say that all information and the name of a defence lawyer and the time of his arrival are dictated to me by a police officer conducting the questioning and who also signs the record. Lawyers do not always promptly answer our calls and sometimes we have to wait for them. When I am asked whether we start with the questioning before that, I can say that we do not."

86. The applicant objected to the veracity of the witness statement to the effect that she had not been present at his questioning by the police.

87. The defence lawyer requested the applicant's release but it was denied and a separate decision was adopted to that effect. The presiding judge held that the case file showed that the presence of the applicant in the proceedings could not be ensured because he had neither lived at his registered address nor at the address indicated as his temporary residence. The address the applicant indicated at the hearing was not the one at which he was registered. Against that background, and in view of the large number of criminal charges against him, the presiding judge concluded that there was a risk that the applicant would continue to change his place of residence and again become unavailable.

88. On 16 July 2008 the applicant also requested his release.

89. On 17 July 2008 a three-judge panel of the Zagreb Municipal Court denied the request on the same ground as the presiding judge in her decision of 14 July 2008.

90. On 22 July 2008 the applicant lodged a constitutional complaint against the decisions of 20 November 2006 and 23 June 2008 arguing, *inter alia*, that his right to liberty of person was violated as well as his right to receive an answer to his appeal; that the prescribed procedures had not been complied with; and that the lower first-instance court had not conducted the proceedings with the required efficiency.

91. On 24 July 2008 a three-judge panel of the Zagreb Municipal Court extended the applicant's detention under Article 102 § 1(1) (fear of absconding) and 1(3) (fear of reoffending) of the Code of Criminal Procedure, citing the same reasons as before.

92. On 28 July 2008 the applicant lodged an appeal, arguing that on 19 June 2008 the statutory maximum period for his detention had expired. He also argued that his detention between 23 and 24 July 2008 was not covered by any decision. He further claimed that two separate decisions on his detention existed at the same time, since in the proceedings at issue a decision ordering his detention had been adopted on 20 November 2006 and in the proceedings no. Ko-2403/07 he was arrested and placed in pre-trial detention on 19 June 2007 on the basis of a detention order of 22 May 2007.

He considered that situation unlawful. He further argued that the reasons for extending his detention were not relevant and that the proceedings were not conducted with the required efficiency, all in breach of Article 5 of the Convention.

93. On 29 July 2008 the Zagreb County Court dismissed the applicant's appeal, finding that the reasons put forward by the Municipal Court were relevant and sufficient. It made no comments as to the remaining arguments by the applicant.

94. On 11 August 2008 the applicant sought his release arguing that the reasons for his detention had ceased to exist and also that the proceedings had not been conducted with the required efficiency.

95. On 12 August 2008 a three-judge panel of the Zagreb Municipal Court denied the request, reiterating previous reasons as regards the ground for the applicant's detention and making no comments as to the conduct of the proceedings.

96. On 29 August 2008 a three-judge panel of the Zagreb Municipal Court extended the applicant's detention under Article 102 § 1(1) (fear of absconding) and 1(3) (fear of reoffending) of the Code of Criminal Procedure, citing the same reasons as before.

97. On 1 September 2008 the applicant lodged an appeal reiterating the same arguments as in his appeal of 28 July 2008.

98. On 2 September 2008 a hearing was held in the presence of the applicant and without defence counsel. The applicant agreed that two witnesses had given evidence.

99. On 10 September 2008 lawyer D.M. lodged an appeal against the decision of 29 August 2008 arguing that the reasons for the applicant's detention had ceased to exist and that no alternative measures had been considered.

100. On 11 September 2008 the Zagreb County Court dismissed both appeals, endorsing the reasons of the first-instance court.

101. The applicant lodged a constitutional complaint on 21 September 2008. He challenged the grounds for his detention and also argued that the statutory maximum period for his detention had expired and that the first-instance court had not conducted the proceedings with the required efficiency, contrary to Article 5 of the Convention.

102. At a hearing on 22 September 2008 the applicant presented his defence. He firstly stated that he maintained his statement of 20 May 2008 and then gave his defence to the charges preferred in the proceedings previously conducted under case file no. Ko-2730/07. The relevant part of his statement reads:

“... on 19 June 2007 I was shopping when I was arrested by the police and taken to a police station and questioned about the criminal offences of thefts and burglaries committed in the territory of the Fifth Police Station. I was questioned the second day after my arrest and pressure was put on me. I was physically ill-treated by the police

officers who beat me and my confession was thus forced. On that occasion lawyer S.S. was called but he did not attend my interview. I do know that he talked to the police officers and signed the written record of my questioning. I stayed in detention in connection with the other set of proceedings. I did not say any of what is stated in the written record of my questioning by the police officers in the Fifth Police Station.

To a question by the representative of an injured party I can say that I did not enter any of the premises or take any of the items listed in the indictment and I am not familiar with Ksaver [an area in Zagreb].

To a further question by the representative of an injured party I can say that the police did not find on me any items which were not mine.”

103. Lawyer E.Č. also gave his evidence:

“Owing to the passage of time I do not remember the defendant. Likewise, I do not remember the time of the questioning on 2 November 2005 on the premises of the Fifth Police Station in Zagreb. At that time I was often called by the police officers to attend interviews of suspects. Usually I would first talk in private with a suspect and explain their rights to them and their procedural position and then the suspects alone would decide whether to give their defence to the police. When they decided to give their defence I would be present during the entire questioning. After that the written record would be read out loud to the suspect and then both the suspect and I would sign it.

To a question by the defence lawyer that the defendant had said that he had paid HRK 500 to me, I can say that I do not remember it but I admit that it could be true.”

104. The applicant then objected to the evidence given by lawyer E.Č. and said that the written record of his questioning of 2 November 2005 had been signed only the next day at the request of a court.

105. At the end of the hearing the defence lawyer asked for the applicant’s detention to be discontinued. The request was denied by a decision issued on the same day. The Municipal Court reiterated its previous arguments.

106. On 1 October 2008 the Constitutional Court accepted the applicant’s constitutional complaint of 21 September 2008 against a decision by the Zagreb Municipal Court of 29 August 2008 and a decision by the Zagreb County Court of 11 September 2008, in the part concerning the ground for his detention under Article 102 § 1(1) of the Code of Criminal Procedure (fear of absconding), and at the same time upheld both impugned decisions in the part referring to the ground under Article 102 § 1(3) of the Code of Criminal Procedure (fear of reoffending). The Constitutional Court made no comments on the applicant’s argument that the statutory maximum period for his detention had expired and the argument that the conduct of the proceedings was inefficient.

107. On 10 October 2008 a three-judge panel of the Zagreb Municipal Court extended the applicant’s detention under Article 102 § 1(3) of the Code of Criminal Procedure (fear of reoffending) and reiterated its previous arguments as regards that ground.

108. At a hearing held on 13 October 2008 the Municipal Court heard evidence from lawyer S.S. and police officers R.Đ. and I.K.

109. The relevant part of the statement given by lawyer S.S. reads as follows:

“I remember that I participated in the questioning of the defendant on the premises of the Fifth Police Station in Zagreb on 20 June 2007 and I do remember that the questioning concerned some burglaries and I also remember that the defendant has never paid for my services. I do not remember the details of the questioning but I do remember that the police officers called me from the list of lawyers on duty and that at the beginning I refused to represent the defendant but the police officers convinced me that the defendant would pay for my services, so then I agreed to represent him and I came to the police station.

To a question from the presiding judge I can say that before the questioning I talked with the defendant and informed him of his rights, that is to say I informed him that his statement given to the police in my presence could be used at the criminal trial against him. I do not remember other details. I was present from the beginning until the end of the questioning.

To a further question whether I signed the written record of the questioning I can say that I do not remember that but when the written record is shown to me I can say that my signature is there.

To a question whether the record was read out to the defendant, I can say that I do not remember such details.

To a further question from the presiding judge I can say that before the questioning the defendant had given me his mobile telephone as a guarantee that he would pay for my services.

To a question from the defence lawyer I can say that the questioning lasted about an hour and that the Fifth Police Station is in Bauerova Street.

To a question from the defendant I can say that I do not remember how much time I spent with him. I do remember that [the questioning] concerned several criminal offences - six, seven or eight - and the written record contained three pages.”

110. The relevant part of the statement of police officer R.Đ. reads:

“It is true that I was present at the questioning of the defendant at the Fifth Police Station in Zagreb on 20 June 2007 and that lawyer S.S. was called and that the lawyer was present at the previous questioning of the same defendant, as well as lawyer E.Č. I do not remember whether lawyer S.S. was called at the request of the defendant or from the list of on-duty lawyers. We allowed the defendant, as we usually do, to consult the lawyer in private before the questioning. Such consultations usually last about five to ten minutes in a room where they are left alone.

To a question from the judge I can say that I do not remember how long exactly lawyer S.S. and the defendant talked in private before the questioning commenced.

During the questioning the defendant gave his defence freely and he was also asked some questions.

After he had given his defence I dictated the written record and the record was written in the presence of the defendant and the lawyer.

At a question by the judge I can say that when completed the record was read out to the defendant and the lawyer and given to them to sign it. I remember that the lawyer took a copy of the record.

To a question from the judge whether there were any problems between the defendant and the lawyer concerning the paying [of the lawyer's services] I can say that I do not know anything about it because the defendants usually make arrangements about it alone with their lawyers.

To a question from the defence lawyer I can say that I do not remember that the police and the lawyer discussed the payment since we are not interested in what would be arranged between a defendant and a lawyer.

To a question from the defence lawyer whether we often call lawyer S.S., I can say that we call a lawyer who is available at the time.

To a question from the defendant whether I am sure that I questioned him I can say that I questioned him at least three times.

...

When the written record ... is now shown to me I can say that it contains my signature."

111. The applicant objected to the veracity of the witness statement saying that police officer R.Đ. had not questioned him.

112. The relevant part of a statement given by police officer I.K. reads;

"I do not remember whether I was present at the defendant's questioning at the Fifth Police Station on 20 June 2007 together with police officer R.Đ. I do know the defendant from November 2006 when I was a part of the police team which arrested him. I also participated in the questioning of the defendant at the police station about twice but I do not remember the questioning at issue.

When the written record of 20 June 2007 ... is now shown to me I can say that it contains my signature. Sometimes, when there is no typist on duty it is me who types the written record.

To a question from the judge I can say that I do remember that lawyer S.S. was called but it is all hazy and I cannot remember any details."

113. On 16 October 2008 the applicant lodged an appeal against a decision of 10 October 2008 extending his detention. He challenged the grounds of his detention, argued that the statutory maximum period for his detention had expired and also argued that Article 5 of the Convention had been violated and that the courts had not conducted the proceedings with the required efficiency.

114. On 21 October 2008 the Constitutional Court declared the applicant's appeal of 22 July 2008 inadmissible on the ground that the

impugned decision was no longer in effect since, in the meantime, a fresh decision further extending the applicant's detention had been adopted.

115. On 24 October 2008 the defence lawyer lodged an appeal against the decision of 10 October 2008 extending the applicant's detention. He challenged the grounds for detention put forward by the Municipal Court.

116. On 24 October 2008 the Zagreb County Court dismissed both appeals against the decision of 10 October 2008. It endorsed the Municipal Court's reasoning.

117. On 5 November 2008 the applicant lodged a constitutional complaint, reiterating his previous arguments and particularly stressing that in its previous decision the Constitutional Court had not examined his complaint about the inefficient conduct of the proceedings under Article 5 of the Convention.

118. A hearing was held on 12 November 2008 in the presence of the applicant and his defence lawyer.

119. On 24 November 2008 a three-judge panel of the Zagreb Municipal Court extended the applicant's detention under Article 102 § 1(3) (fear of reoffending) of the Code of Criminal Procedure, reiterating its previous arguments.

120. On 26 November 2008 the Constitutional Court dismissed the applicant's constitutional complaint of 5 November 2008, accepting the grounds put forward by the lower courts for the applicant's detention as justified. It made no comments on the applicant's objection about the conduct of the proceedings and his argument that the statutory maximum period of his detention had expired.

121. On 26 November and 8 December 2008, respectively, the applicant and the defence lawyer each lodged an appeal against the decision of 24 November 2008, challenging the extension of the applicant's detention.

122. On 5 and 10 December 2008 respectively the Zagreb County Court dismissed the applicant's and the lawyer's appeals, endorsing the reasoning of the Zagreb Municipal Court.

123. On 15 December 2008 a hearing was held in the presence of the applicant and his defence lawyer.

124. On 17 December 2008 the applicant lodged a constitutional complaint against the decisions of 5 December 2008, reiterating the arguments from his previous constitutional complaints.

125. On 12 January 2009 a hearing was held in the presence of the applicant and his defence lawyer.

126. On the same day a three-judge panel of the Zagreb Municipal Court extended the applicant's detention under Article 102 § 1(3) (fear of reoffending) of the Code of Criminal Procedure, reiterating its previous arguments.

127. On 15 January 2009 both the applicant and his defence counsel lodged separate appeals against the above decision, challenging the grounds

of the applicant's detention and arguing that each new decision extending his detention repeated the same reasoning.

128. On 20 January 2009 the Zagreb County Court dismissed the appeals.

129. A hearing scheduled for 29 January 2009 was adjourned owing to the non-attendance of the witnesses called. On the same day the proceedings against the applicant in respect of one count of theft were terminated because on 9 January 2009 the Zagreb Municipal State Attorney's Office had discontinued further prosecution.

130. On 30 January 2009 the applicant lodged a constitutional complaint against the decision of 20 January 2009, challenging the grounds for his detention and again arguing that the statutory maximum period for his detention had expired.

131. On 11 February 2009 the Constitutional Court dismissed the complaint finding that the applicant's detention was justified and made no comments as to the applicant's argument that the statutory maximum period for his detention had expired.

132. On 12 February 2009 the Fifth Police Station informed the Zagreb Municipal Court that the applicant had been taken from prison to that police station on 9 November 2005 between 9 a.m. and 4 p.m., by an order issued by a judge of the Zagreb Municipal Court. They also said that the written record of the applicant's questioning was erroneously dated 2 November 2005 instead of 9 November 2005.

133. At a hearing held on the same day the applicant gave further evidence. The relevant part of his statement reads as follows:

"... it is not true that I signed the written record of my questioning by the police on 2 November 2005 as is stated in that record. Some time in mid November 2005 I was taken from Zagreb Prison on an order by a judge of the Zagreb Municipal Court to the Fifth Police Station and they gave me the record to sign. However, I do not know what I was signing, I just signed what they gave me because they told me that I had to sign it. Once there I had to wait for lawyer E.Č. When he arrived he gave me his business card, spoke for some time with the police officers and then we went to sign the record.

To a question from the judge as to why I did not ask what I was signing I can say that I had been at the police many times and had never asked what I was signing and I did not at all ask for a lawyer to be present. To a question about why I signed a document granting authority to the lawyer, I can say that I do not know why I did so. ..."

134. A letter from the Zagreb Prison Governor to the Municipal Court on 16 February 2009 showed that on 9 November 2005 the applicant had been taken out of Zagreb Prison to the Fifth Police Station between 9.25 a.m. and 11.35 a.m.

135. On 19 February 2009 the Constitutional Court declared the applicant's constitutional complaint of 17 December 2008 inadmissible (see

above, paragraph 124) on the ground that that the impugned decision was no longer in effect, since in the meantime a fresh decision further extending the applicant's detention had been adopted.

136. At a hearing on 10 March 2009 the defence lawyer requested that the written records of the applicant's questioning by the police on 9 November 2005 (erroneously dated 2 November 2005) and on 20 June 2007 be removed from the case file since these records were unlawful evidence. It was not established when lawyer E.Č. had arrived because there is no relevant evidence as to that fact. The record showed that the questioning lasted from 12.30 p.m. until 1.40 p.m. in connection with seven counts of different criminal offences. The questioning on 20 June 2007, concerning twenty-five criminal offences, supposedly lasted for about an hour, which could not be possible because the witness S.V.F. had said that the questioning was conducted in such a way that the applicant first stated his defence and then the written record was dictated to her by a police officer before further questions were put to the applicant. Such questioning in respect of twenty-five different offences could not have been completed within an hour.

137. The request was denied.

138. On the same day the applicant was found guilty of thirty-one counts of theft and sentenced to three years and six months' imprisonment. The conviction was to a significant extent based on the applicant's statements given to the police.

The relevant part of the judgment reads as follows:

"As regards the written record of the defendant's questioning on 2 November 2005 this court heard evidence from E.Č., H.Ć. and S.[V.]F.

[statements given by these witnesses are then reproduced]

This court accepts the statement of witnesses H.Ć. and S.[V.]F. as regards the circumstances in which the written record of the defendant's questioning in the Fifth Police Station were drawn up, because there is no reason not to believe them, since they are State officials who have a duty to act in accordance with the law and who know the relevant laws well.

[This court also accepts] the statement by E.Č. because his statement has not been called into question. It is logical in life that the witnesses [H.]Ć. and S.V.F. do not remember details of the defendant's questioning, owing to the passage of time and the numerous interviews they conduct daily, as well as witness E.Č., who also said that he was often present at such interviews and it is undisputed that the questioning [of the defendant] took place three years before the time when the witnesses gave their evidence. Their statements as regards the usual method of the questioning of suspects are concordant and mutually corroborated, which leads this court to conclude that there is no reason not to believe them that at the end of the questioning a written record is read out to the parties and they sign it or that the record is given to the parties to read it if they wish to.

... information has been obtained from the Fifth Police Station that the defendant was questioned on 9 November 2005, as shown by the evidence that the defendant was [on that day] taken out of detention, and the mention of 2 November 2005 in the written record was an error. This however does not indicate that the defendant's objection that the questioning was not conducted in accordance with the law is well founded because it has not been put in doubt, and the court finds this objection unfounded and aimed at avoiding the defendant's criminal responsibility.

As regards the written record of the defendant's questioning on 20 June 2007... this court heard evidence from S.S., R.Đ. and I.K.

[statements given by these witnesses are then reproduced]

This court accepts the statement by witness [S.]S. as true because it has not been put in doubt. It also accepts the statements of witnesses R.Đ. and I.K. finding that there is no reason not to believe them because they are State officials who have a duty to act in accordance with the law and know the laws well, and it is understandable that witness [I.]K. could not remember the details of the defendant's questioning owing to the passage of time and the numerous interviews he conducts daily. Since this evidence was truthful and logical, this court finds that there is no reason not to believe them, that is to say their statement that after the written record is completed it is given to the parties to read and sign.

In view of the above, this court deems unfounded the defendant's defence given at the trial, where he said that he had not read the written record of his questioning by the Zagreb Police, and that that record had not been read out to him so that he had not known the content of the record, as well as that he had signed the record under duress and only in order to be released. ...

Therefore this court finds the defendant's defence given at the trial unconvincing. It is necessary to stress that in his defence given to the police the defendant said that he had stolen some items but denied taking money from wallets, although the latter was established as fact from the evidence given by the injured parties at the trial. Had the police officers falsified the written record of his questioning, as suggested by the defendant, then they would surely also have mentioned the taking of the money according to the complaints of the injured parties. Contrary to this, the written record states that the defendant did not take any money, which clearly shows that the police officers did not impute anything to the defendant ..."

139. In addition, his detention was extended until 19 June 2009, under Article 102 § 1(3) (fear of reoffending) of the Code of Criminal Procedure, with the same reasoning as before.

140. On 16 and 20 March 2009 respectively the applicant and his defence lawyer lodged their separate appeals against a decision extending the applicant's detention. They challenged the ground for the applicant's detention and argued that the detention between 20 February and 10 March 2009 was not covered by any decision.

141. On 24 March the Zagreb County Court dismissed the appeals, endorsing the reasoning of the first-instance court as to the ground for the applicant's detention. It made no comments on the argument that the

applicant's detention between 20 February and 10 March 2009 was not covered by any decision.

142. On 26 and 27 March 2009 respectively the applicant and his defence lawyer lodged their separate appeals against the first-instance judgment of 10 March 2009. They argued that the applicant's statements given to the police on two occasions, on 2 November 2005 and 20 June 2007, were unlawful evidence because the applicant had been heard without the presence of a lawyer and the statements were fabricated by the police. Both times the lawyers had been called by the police and were not a choice of the applicant.

143. As regards the record of the applicant's questioning of 2 November 2005, it remained unclear when exactly the applicant had been questioned. The police officer who allegedly questioned the applicant, H.Č., claimed that the questioning had taken place on 2 November 2005, while a letter by the Fifth Police Station sent to the Municipal Court stated that the questioning had taken place on 9 November 2005 and that it had been erroneously dated 2 November 2005. However, a letter by the Zagreb Prison Governor sent to the Municipal Court on 16 February 2009 showed that on 9 November 2005 the applicant had been taken out of Zagreb Prison to the Fifth Police Station between 9.25 a.m. and 11.35 a.m., which means that, taking into account the time needed for travel, the questioning lasted for about five minutes. In that time, however, it was impossible for the applicant to consult a defence lawyer, to give his defence and for the police to dictate and type his defence.

144. They further argued that the only way to be sure when a defence lawyer arrived would be if the police had a record of all defence lawyers' arrivals and departures from the police stations, but this was not the case and it was thus impossible to establish with certainty when the defence lawyer called by the police arrived. It was recorded that lawyer E.Č. arrived at 12.30 p.m. and that the questioning ended on 1.30 p.m. on 2 November 2005.

145. As regards the applicant's questioning on 20 June 2007, they argued that lawyer S.S. had stated that the questioning had lasted for about an hour. However, the charges about which the applicant was questioned that day contained twenty-five separate counts of theft and it would have been impossible for the applicant to consult his defence lawyer, give his defence and for the police to dictate and type the written record, all in one hour.

146. On 17 April 2009 the applicant lodged a constitutional complaint against decisions by the Municipal Court of 10 March 2009, extending his detention, and a decision by the Zagreb County Court of 24 March 2009, repeating his previous arguments. On 8 July 2009 the Constitutional Court declared the complaint inadmissible because, in the meantime the applicant's conviction of 10 March 2009 had become final and therefore the

decision of 24 March 2009, upholding the decision of 10 March 2009, was no longer in effect.

147. On 2 June 2010 the Zagreb County Court upheld the applicant's conviction. The relevant part of the judgment reads:

"... the impugned judgment contains clear and valid reasons about all decisive facts, including why the first-instance court accepted the evidence given by H.Č., S.S., S.V.F. and I.K. as true. ...The written records on the defendant's questioning by the police, as rightly concluded by the first-instance court, are lawful evidence because the defendant was questioned in the presence of his defence counsel.

...

... the first-instance court correctly and completely established the facts of the case ..., correctly and diligently assessed all evidence and correctly accepted the evidence given by all witnesses, ... including those who testified about the circumstances of the defendant's questioning by the police. All these witnesses testified only about the [facts] they remembered; some of them said that owing to a large number of such interviews they could not remember all details, but they testified how in general such interviews are conducted.

The first-instance court ... reproduced in detail the evidence given by persons who testified about the defendant's police interview ... Thus, it heard evidence from lawyers E.Č. and S.S. and police officers H.Č., S.V.F., R.Đ. and I.K. In the impugned judgment their evidence is reproduced in detail and then the evidence was diligently assessed, each separately and in their mutual connection and then the defence given by the defendant to the police and the other, given at the trial, were both assessed ... The first-instance court, in view of all evidence presented, including the information about taking the defendant from prison owing to a mistake in the date when the written record had been drawn up, correctly concluded that ...the defence given by the defendant at the trial, where he said that he had signed the written record under duress and that he had not been questioned in the presence of a defence lawyer, was unconvincing and aimed at avoiding his criminal responsibility and contrary to all other evidence, which had been rightly assessed by the first-instance court as truthful. ..."

148. On 2 July 2009 the applicant lodged a request for extraordinary review of a final judgment with the Supreme Court (*Vrhovni sud Republike Hrvatske*). He reiterated the arguments from his appeal of 26 March 2009.

149. On 7 October 2009 the Supreme Court dismissed the applicant's request. The relevant part of the judgment reads:

"... the first-instance and second-instance courts, after finding that the defendant ... had been questioned by the police in the presence of his defence counsel (as is stated in the impugned written records) and that the police officers had not obtained his statement under duress, rightly concluded that these records were not unlawful evidence ...".

2. Criminal proceedings conducted under case file no. Ko-2730/07

150. On 19 June 2007 at 9.30 p.m. the applicant was arrested and taken to the Fifth Zagreb Police Station in connection with a suspicion that he had

committed twenty-five separate thefts. The record of his questioning drawn up on 20 June 2007 states that the questioning started at 3 p.m. and that lawyer S.S. had been called at 2 p.m. and arrived at 3 p.m. The applicant confessed to the charges. There is no mention of the time when the questioning ended and when the applicant was released.

151. On 13 July 2007 the Zagreb Municipal State Attorney's Office preferred charges against the applicant in the Zagreb Municipal Court on twenty-five counts of theft allegedly committed in the period between 18 August 2006 and 6 June 2007.

152. A hearing scheduled for 19 February 2008 was adjourned owing to the applicant's absence.

153. On 4 April 2008 the Zagreb Police informed the Municipal Court that the applicant had no permanent address or place of residence.

154. A hearing scheduled for 16 May 2008 was adjourned because the applicant stated that he wanted to be legally represented.

155. On 26 May 2008 the President of the Zagreb Municipal Court appointed lawyer D.V.T. to represent the applicant in the proceedings at issue.

156. When on 13 June 2008 the proceedings at issue were joined to the criminal proceedings in case no. Ko-3257/05 (see above, paragraph 80) the presiding judge relieved lawyer D.V.T. of his duties.

3. Conditions of the applicant's detention

157. The applicant alleged that since 19 June 2007 he had been placed in Zagreb Prison in a cell measuring 20.25 square metres, together with six other inmates, with a semi-secluded toilet, without ventilation or proper furniture. The window was barred with thick aluminium netting and let almost no air through. As a result the cell was constantly bed-smelling and airless, and in the summer unbearably hot. He was constantly confined in the cell.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Relevant law

158. The relevant articles of the Croatian Constitution (*Ustav Republike Hrvatske*) provide as follows:

Article 23

"No one shall be subjected to any form of ill-treatment ..."

Article 25

“All detainees and convicted persons shall be treated in a human manner and with respect for their dignity.

...”

159. The relevant provisions of the Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu*, Official Gazette no. 29/2002) read as follows:

Section 32

“The Constitutional Court shall declare inadmissible any request or complaints in respect of which it has no jurisdiction; which are lodged out of time; and in other situations where the conditions for examining the merits of a case are not met.”

Section 62

“1. Everyone may lodge a constitutional complaint with the Constitutional Court if he or she deems that a decision (*pojedinačni akt*) of a State body, a body of local and regional self-government, or a legal person with public authority, which has decided on his or her rights and obligations, or on a suspicion or accusation of a criminal act, has violated his or her human rights or fundamental freedoms, or his or her right to local and regional self-government guaranteed by the Constitution (hereinafter ‘constitutional right’) ...”

160. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 143/2002, 63/2002, 62/2003 and 115/2006) read as follows:

Article 9

“(1) Court decisions shall not be based on evidence obtained in an unlawful manner (unlawful evidence).

(2) Unlawful evidence is that obtained in a manner which infringes the defence rights guaranteed ... by international law ...”

Article 101

“(1) Detention may be imposed only if the same purpose cannot be achieved by another [preventive] measure.

(2) The detention measure shall be lifted and the detainee released as soon as the grounds for detention cease to exist.

(3) When deciding on detention, in particular its duration, the court shall take into consideration the proportionality between the gravity of the offence, the sentence

which ... may be expected, and the need to order and determine the duration of the detention.

(4) The judicial authorities conducting the criminal proceedings shall proceed with particular urgency when the defendant is being held in detention and shall review as a matter of course whether the grounds and legal conditions for detention have ceased to exist, in which case the custodial measure shall immediately be lifted.”

Article 102

“(1) Where a reasonable suspicion exists that a person has committed an offence, that person may be placed in detention:

1. where circumstances justify a risk of absconding ...

...

3. special circumstances justify the suspicion that the person concerned might reoffend

...”

Article 109

“(1) Until the delivery of the first-instance judgment, detention on remand may last for a maximum of:

...

- 2. one year for offences carrying a sentence of a statutory maximum of five years’ imprisonment;

...

(2) In cases where a judgment has been delivered but has not yet entered into force, the maximum term of detention on remand may be extended for one sixth of the term referred to in subparagraphs 1 to 3 of paragraph 1 of this provision until the judgment becomes final, and for one quarter of the term referred to in subparagraphs 4 and 5 of paragraph 1 of this provision.

(3) Where the first-instance judgment has been quashed on appeal, following an application by the State Attorney and where important reasons exist, the Supreme Court may extend the term of detention referred to in subparagraphs 1 to 3 of paragraph 1 of this provision for another six months and the term referred to in subparagraphs 4 and 5 of paragraph 1 of this provision for a further year.

(4) Following the delivery of a second-instance judgment against which an appeal lies, detention may last until the judgment becomes final, for a maximum period of three months.

(5) A defendant placed in detention and sentenced to a prison term by a final judgment shall remain in detention until he is committed to prison, but for no longer than the duration of his prison term.”

Article 367

“...

(2) A grave infringement of the Criminal Code shall be constituted where a conviction is based on evidence as defined under Article 9(2) of the present Code.

...”

Article 425

“(1) A defendant who has been finally sentenced to a prison term ... may lodge a request for the extraordinary review of a final judgment on account of infringements of this Act.

(2) A request for the extraordinary review of a final judgment shall be lodged within a month after the final judgment has been served on the defendant.

...”

Article 426

“The Supreme Court shall decide on requests for the extraordinary review of a final judgment.”

Article 427

“A request for the extraordinary review of a final judgment may be lodged [in respect of]:

...

2. An infringement of the rules of criminal procedure under ... Article 367(2) of the present Code ...”

Pursuant to Article 430 of the Code of Criminal Procedure, where the defendant requests an amendment of a final judgment following a finding by the European Court of Human Rights of a violation of, *inter alia*, the right to a fair trial, the rules governing retrial shall apply.

161. The relevant provisions of the Criminal Code (*Kazneni zakon Republike Hrvatske*, Official Gazette 110/1997) read as follows:

THEFT

“Anyone who takes property belonging to another person with the intention of unlawfully keeping it shall be fined or sentenced to imprisonment for a term not exceeding three years.

...”

Article 217 provides that aggravated theft is punished with a term of imprisonment of between six months and five years.

162. The relevant provisions of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 35/2005 and 42/2008) read as follows:

Section 19

“(1) Every legal entity and every natural person has the right to respect for their personal integrity under the conditions prescribed by this Act.

(2) The right to respect for one’s personal integrity within the meaning of this Act includes, *inter alia*, the right to life, physical and mental health, good reputation and honour, the right to be respected, and the right to respect for one’s name and for the privacy of personal and family life and freedom.

...”

Section 1046

“Damage is ... infringement of the right to respect for one’s personal integrity (non-pecuniary damage).”

163. The relevant part of section 186(a) of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette nos. 53/91, 91/92, 58/93, 112/99, 88/01 and 117/03) reads as follows:

“A person intending to bring a civil suit against the Republic of Croatia shall first submit a request for a settlement to the competent State Attorney’s Office.

...

Where the request has been refused or no decision has been taken within three months of its submission, the person concerned may file an action with the competent court.

...”

164. The relevant provisions of the Enforcement of Prison Sentences Act (*Zakon o izvršavanju kazne zatvora*, Official Gazette nos. 128/1999 and 190/2003), under the heading “Judicial Protection Against Acts and Decisions of the Prison Administration”, read as follows:

Section 17

“(1) An inmate may lodge a request for judicial protection against any acts or decisions unlawfully refusing him, or limiting, any of the rights guaranteed by this Act.

(2) Requests for judicial protection shall be decided by the judge responsible for the execution of sentences.”

165. The relevant provisions of the Courts Act (*Zakon o sudovima*, Official Gazette nos. 150/2005; 16/2007; 113/2008; 153/2009) read as follows:

Section 14

“ ...

The Supreme Court of the Republic of Croatia is the highest court in Croatia.

...”

Section 22

“The Supreme Court of the Republic of Croatia:

- ensures uniform implementation of laws;
 - considers current issues concerning judicial practice;
- ...”

B. Relevant practice

166. In its decision of 17 March 2009 (nos. U-III/4182/2008 and U-III/678/2009) in the case of Robert Peša, concerning, *inter alia*, the conditions of the pre-trial detention of the applicant in that case in Zagreb Prison, the Constitutional Court found a violation of Mr Peša’s right to humane treatment and to respect for his dignity and also ordered the Government to adjust the facilities at Zagreb Prison to the needs of detainees within a reasonable time, not exceeding five years. It further held that a complaint about the prison conditions to a judge responsible for the execution of sentences under the Enforcement of Prison Sentences Act was also to be used by persons in pre-trial detention. The relevant part of this decision reads:

“20. ... the Constitutional Court established the following binding legal opinion:

- the courts are obliged to apply the same procedures, concerning requests for the protection of the rights of convicted prisoners submitted to the judges responsible for

the execution of sentences, where such requests are lodged by persons placed in pre-trial detention ...

...

22. For the reasons set out in points ... 17 [of this decision] the Constitutional Court finds that the general conditions of the applicant's detention amount to degrading treatment and thus infringe his constitutional rights guaranteed under Article 23 and Article 25(1) of the Constitution, and also his rights under Article 3 of the Convention.

The Constitutional Court has not addressed the possibility of granting the applicant just satisfaction for the above infringements of his constitutional and Convention rights because in the Croatian legal system there exists another, effective legal remedy in that respect (see the Constitutional Court's decision no. U-III-1437/07 of 23 April 2008)."

167. In decision no. U-III-1437/2007 of 23 April 2008, the Constitutional Court found that the conditions of detention of a prisoner, P.M., in Lepoglava State Prison amounted to inhuman treatment. It also addressed the question of P.M.'s claim for just satisfaction. The relevant parts of the decision read:

"In particular, the Constitutional Court finds unacceptable the [lower] courts' opinion that in this case a claim for non-pecuniary damage cannot be awarded under section 200 of the Civil Obligations Act on the ground that such a compensation claim is unfounded in law.

...

Section 1046 of the Civil Obligations Act defines non-pecuniary damage as infringement of the right to respect for one's personal integrity. In other words, every infringement of a person's right to personal integrity amounts to non-pecuniary damage.

Section 19(2) of the Civil Obligations Act defines the right to personal integrity for the purposes of that Act as: the right to life, physical and mental health, reputation, honour, respect for one's dignity and name, privacy of personal and family life, freedom and other aspects.

... it is to be concluded that in this case there has been a violation of human, constitutional and personal values because the applicant was in prison conditions which were incompatible with the standards prescribed by the Enforcement of Prison Sentences Act and also with the legal standards under Article 25 § 1 of the Constitution. For that reason the courts are obliged to award compensation for the infringement of the applicant's dignity. ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

168. The applicant complained that the conditions of his detention in Zagreb Prison where he had been placed since 19 June 2007 had been inhuman. He relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Admissibility

1. The parties' arguments

169. The Government argued that the applicant had not exhausted available domestic remedies. They maintained that he had not complained about the conditions of his detention to a Zagreb County Court judge responsible for the execution of sentences, to the prison authorities or to the Central Prison Administration.

170. The applicant argued that he did not need to exhaust domestic remedies because the Constitutional Court had found that the conditions in Zagreb Prison were inhuman and that the prison was overcrowded, and that therefore no remedy would be effective.

2. The Court's assessment

(a) General principles

171. The Court reiterates that the machinery for the protection of fundamental rights established by the Convention is subsidiary to the national systems safeguarding human rights. The Convention does not lay down for the Contracting States any given manner for ensuring within their internal law the effective implementation of the Convention. The choice as to the most appropriate means of achieving this is in principle a matter for the domestic authorities, who are in continuous contact with the vital forces of their countries and are better placed to assess the possibilities and resources afforded by their respective domestic legal systems (see *Swedish Engine Drivers' Union v. Sweden*, 6 February 1976, § 50, Series A no. 20; *Chapman v. the United Kingdom* [GC], no. 27238/95, § 91, ECHR 2001-I; and *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 90, ECHR 2007-II).

172. In accordance with Article 35 § 1 of the Convention, the Court may only deal with a matter after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Hentrich v. France*, 22 September 1994, § 33, Series A no. 296-A, and *Remli v. France*, 23 April 1996, § 33, *Reports* 1996-II). Thus, the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. To hold otherwise would not be compatible with the subsidiary character of the Convention system (see *Gavril Yosifov v. Bulgaria*, no. 74012/01, § 42, 6 November 2008). Nevertheless, the obligation to exhaust domestic remedies requires only that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *John Sammut and Visa Investments Limited v. Malta* (dec.), no. 27023/03, 28 June 2005).

(b) Application of these principles in the present case

173. The Court notes that in its decision of 17 March 2009, case nos. U-III/4182/2008 and U-III/678/2009, the Constitutional Court established that the remedies under the Execution of Prison Sentences Act, namely a complaint to a judge responsible for the execution of sentences, applied equally to convicted prisoners and to persons in detention on remand.

174. Furthermore, in the same decision the Constitutional Court itself found a violation of the right of a detained person not to be exposed to inhuman and degrading treatment as regards the prison conditions in Zagreb Prison, the same one where the applicant is placed. Owing to the conditions the Constitutional Court found to be in violation of Article 3 of the Convention, it ordered the immediate release of the person concerned, who then had the right to seek compensation from the State.

175. In its judgment *Peša v. Croatia* (no. 40523/08, 8 April 2010) the Court accepted that the findings of the Constitutional Court together with a possibility of seeking compensation from the State deprived the applicant in that case of his victim status in connection with his complaint about the conditions in Zagreb Prison under Article 3 of the Convention.

176. The Court thus finds that, irrespective of the overcrowding of Zagreb Prison, individual measures are available under the national law and that therefore the available remedies have to be exhausted.

177. The Court notes that the applicant failed to submit his complaint about the prison conditions to a judge responsible for the execution of sentences or to the prison administration and in the case of an unfavourable outcome he could have used further available remedies, including a constitutional complaint in this respect (see *Peša v. Croatia*, cited above,

§§ 78-80). He therefore, contrary to the principle of subsidiarity, failed to afford the national authorities the possibility of remedying the situation he has complained of to the Court.

178. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

179. The applicant complained that on 19 June 2008 the statutory maximum period for his detention had expired and that his detention after that date had been unlawfully and arbitrarily extended, contrary to Article 5 § 1 of the Convention, the relevant part of which reads:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...”

A. Admissibility

180. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

181. The applicant argued that the pre-trial detention ordered against him in both sets of criminal proceedings at issue should be viewed as a whole and that already on 19 June 2008 the maximum period of pre-trial detention allowed under national law had expired.

182. The Government argued that the detention from 19 June 2007 to 19 June 2008 had been ordered in connection with the criminal proceedings conducted under case file no. 2403/07 and that the maximum period of

detention expired on 19 June 2008 when the judge presiding over the trial in these proceedings ordered the applicant's immediate release. However, he had remained in detention on the basis of a detention order issued in the context of the other set of criminal proceedings against him, conducted under case file no. 3257/05. In respect of this detention order the maximum statutory period of detention had not expired.

2. *The Court's assessment*

(a) **General principles**

183. The Court first observes that this case falls to be examined under sub-paragraph (c) of Article 5 § 1, since the purpose of the detention was to bring him before the competent legal authority on reasonable suspicion of having committed an offence.

184. The Court reiterates that Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a "democratic society" within the meaning of the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12, and *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33). Its key purpose is to prevent arbitrary or unjustified deprivations of liberty (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-... and *Ladent v. Poland*, no. 11036/03, § 45, ECHR 2008-... (extracts)).

185. All persons are entitled to the protection of that right, that is to say, not to be deprived or continue to be deprived of their liberty (see *Weeks v. the United Kingdom*, 2 March 1987, § 40, Series A no. 114), save in accordance with the conditions specified in paragraph 1 of Article 5. The list of exceptions set out in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his or her liberty (see *Amuur v. France*, 25 June 1996, § 42, *Reports* 1996-III; *Labita v. Italy* [GC], no. 26772/95, § 170, ECHR 2000-IV; and *Assanidze v. Georgia* [GC], no. 71503/01, § 170, ECHR 2004-II).

186. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and enshrine the obligation to conform to substantive and procedural rules thereof. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and should review whether this law has been complied with (see, among many other authorities, *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III, and *Assanidze v. Georgia*, cited above, § 171).

187. This primarily requires any arrest or detention to have a legal basis in domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention (see *Stafford*, cited above, § 63, and *Kafkaris*, cited above, § 116). “Quality of the law” in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III; *Nasrulloev v. Russia*, no. 656/06, § 71, 11 October 2007; and *Mooren v. Germany* [GC], no. 11364/03, § 76, 9 July 2009). The standard of “lawfulness” set by the Convention thus requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 54, *Reports* 1998-VII, and *Baranowski v. Poland*, no. 28358/95, § 52, ECHR 2000-III).

188. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among many other authorities, *Winterwerp*, cited above § 37; *Amuur*, cited above, § 50; and *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of “arbitrariness” in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008-...).

(b) Application of these principles in the present case

189. In the instant case, the Court will first consider whether the applicant’s detention was “lawful” and effected “in accordance with a procedure prescribed by law”, as required by Article 5 § 1 of the Convention. It notes that the first detention order was issued on 20 November 2006. However, the applicant was not placed in detention pursuant to that order but remained at large. The order was not served on the applicant because he was considered to be of an unknown address. As long as the applicant was at large this detention order could not come into effect.

190. The applicant was arrested on 19 June 2007 in connection with a different set of criminal proceedings pending against him before the same Municipal Court, also on charges on theft. A second detention order was issued on the same day and the applicant was placed in pre-trial detention pursuant to that second detention order, which thus immediately came into effect.

191. The first detention order, issued on 20 November 2006, was served on the applicant's defence counsel on 17 March 2008. However, it did not come into effect as long as the detention order of 19 June 2007, although issued later, remained in effect.

192. Despite the fact that only one of these two detention orders was in effect, a situation was nevertheless created where two different detention orders were issued in respect of the applicant in parallel criminal proceedings pending against him before the same court, all on charges of different counts of theft or aggravated theft.

193. When on 19 June 2008 the statutory maximum period for the applicant's detention under the detention order, issued on 19 June 2007, expired, the judge conducting the criminal proceedings in connection with which this order had been issued, gave a decision stating that the maximum statutory period of detention had been reached and ordered the applicant's immediate release. However, the applicant was not released because the detention order issued on 20 November 2006 then immediately came into effect.

194. Turning to the relevant provisions of the applicable domestic law, the Court notes that the Code of Criminal Procedure contains no explicit provision regulating such a situation. While section 109 governs statutory maximum periods of detention for different offences, depending on the sentence prescribed, it contains no provisions concerning the maximum detention period on the basis of detention orders adopted in parallel criminal proceedings.

195. Furthermore, although the Government were explicitly asked to provide the Supreme Court's practice regarding the situation at issue, they have not submitted any such material. The Court therefore concludes that the lack of statutory regulation has not been remedied by the practice of the Supreme Court.

196. The absence of any statutory regulation of such a situation and any relevant practice of the Croatian Supreme Court leaves open the possibility for the applicable legislation on the maximum statutory periods of detention to be circumvented.

197. The Court considers that to detain a person after the maximum statutory period for his detention has expired, on the basis of a detention order issued in parallel criminal proceedings, without such detention being based on a specific statutory provision or clear judicial practice, is incompatible with the principle of legal certainty and arbitrary, and runs counter to the fundamental aspects of the rule of law.

198. The Court accordingly finds that the applicant's detention between 19 June 2008 and 10 March 2009 was unlawful, in breach of the provisions of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

199. The applicant complained about the grounds for his detention and the inefficient conduct of the proceedings by the national courts. He relied on Article 5 § 3 of the Convention, the relevant part of which reads:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

1. Detention in connection with the criminal proceedings conducted under nos. 219/06; 2965/06; 2403/07; and 824/08

200. The Court notes that in these proceedings the applicant was arrested on 19 June 2007 and placed in pre-trial detention. On 11 December 2007 he was found guilty and sentenced to one year and three months' imprisonment.

201. The first-instance judgment was partly quashed on 4 March 2008 and the case was in that part remitted to the first-instance court, which delivered a fresh judgment on 3 April 2009. However, in the meantime, on 19 June 2008 the applicant's detention in connection with these proceedings was terminated.

202. The present application was lodged with the Court on 25 March 2009, that is to say more than six months after the applicant's pre-trial detention had ended.

203. It follows that all complaints concerning the applicant's detention in connection with the proceedings at issue have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Detention in connection with the criminal proceedings conducted under nos. 2730/07 and 3257/05

204. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

205. The applicant argued that the national courts had repeatedly relied on the same grounds for ordering and extending his detention without taking into account new developments and that the conduct of the proceedings by the national courts was not in accordance with the requirements of Article 5 § 3 of the Convention.

206. The Government argued that the reasons put forward by the national authorities for ordering and extending the applicant's detention had been relevant and sufficient and thoroughly explained.

2. The Court's assessment

207. The Court notes that the issue to be examined under Article 5 § 3 of the Convention is whether the grounds relied on by the national authorities in the order for the applicant's detention of 20 November 2006, which came into effect on 19 June 2008, and in all subsequent decisions extending his detention, were relevant and sufficient. However, the Court notes that it has already found that the applicant's detention after 19 June 2008 was arbitrary and in contravention of Article 5 § 1 of the Convention. That finding makes it redundant for the Court to further examine whether the grounds for such detention were relevant and sufficient.

208. Against that background and in view of the violation found under Article 5 § 1 of the Convention, the Court finds that it is not necessary to examine further any complaint under Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

209. The applicant further complained that the proceedings concerning his constitutional complaints against the detention orders issued against him had not met the requirements of Article 5 § 4 of the Convention, which reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. Admissibility

210. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It

further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

211. The applicant argued that the Constitutional Court had not examined three of his constitutional complaints on the merits only because, in the meantime, a fresh decision extending his detention had been adopted. He further argued that the national courts had never addressed his complaint that his detention after 19 June 2008 had been unlawful because the statutory maximum period had expired.

212. The Government maintained that the applicant's detention had been frequently reviewed by the competent courts of their own motion and that the applicant had also had the possibility under domestic law of applying for his detention order to be lifted. The applicant had always been able to lodge an appeal with the Zagreb County Court against each decision extending his detention and his appeals had been speedily decided on.

213. The applicant had also lodged several constitutional complaints. Pursuant to section 32 of the Constitutional Court Act, the Constitutional Court did not examine the merits of constitutional complaints against decisions which were no longer in effect at the time when it came to examine the complaints.

214. As regards the complaint that the national courts had not addressed the applicant's arguments concerning the lawfulness of his detention after 19 June 2008, the Government contended that the proceedings before the Constitutional Court fell outside the scope of Article 5 § 4 of the Convention because the Constitutional Court was not a "court" within the meaning of that provision.

215. Furthermore, the applicant's constitutional complaint of 22 July 2008 had been lodged only two days before a fresh decision extending the applicant's detention had been adopted.

2. The Court's assessment

216. At the outset the Court reiterates that in a number of its decisions and judgments concerning Croatia it has already examined various issues about the fairness of the proceedings before the Constitutional Court as well as issues concerning the rights guaranteed under Article 5 of the Convention (see, for example, *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X; *Olujić v. Croatia*, no. 22330/05, §§ 36 and 37, 5 February 2009; *Oršuš and Others v. Croatia* [GC], no. 15766/03, §§ 108- 110, ECHR 2010-...; *Peša v. Croatia*, no. 40523/08, §§ 112-126, 8 April 2010; and *Hađi v. Croatia*,

no. 42998/08, §§ 43-47, 1 July 2010). The Court does not see any reason to deviate from this case-law in the circumstances of the present case.

(a) Inadmissibility of the applicant's constitutional complaints

(i) General principles

217. The Court reiterates that the purpose of Article 5 § 4 is to assure to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12, and *Ismoilov and Others v. Russia*, no. 2947/06, § 145, 24 April 2008). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005, and *Vachev v. Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII). The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy (see, *mutatis mutandis*, *Čonka v. Belgium*, no. 51564/99, §§ 46 and 55, ECHR 2002-I).

(ii) Application of these principles in the present case

218. The Court firstly notes that under the relevant domestic law, after an indictment has been lodged, detention must be judicially reviewed every two months. The Court notes that in the present case the lawfulness of the applicant's detention was considered by the Zagreb County Court and the Constitutional Court on many occasions.

219. However, three of the applicant's constitutional complaints were not examined on the merits. Thus, the constitutional complaint of 22 July 2008 was declared inadmissible on 21 October 2008; the constitutional complaint of 17 December 2008 was declared inadmissible on 19 February 2009; and the constitutional complaint of 17 April 2009 was declared inadmissible on 8 July 2009, each time on the ground that the impugned decision was no longer in effect since, in the meantime, a fresh decision extending detention had been adopted. The Court therefore has to address the question of the compliance of the above-mentioned Constitutional Court's decisions with the requirements of Article 5 § 4 of the Convention.

220. In this connection the Court reiterates that, according to its case-law, Article 5 § 4 enshrines, as does Article 6 § 1, the right of access to a court, which can only be subject to reasonable limitations that do not impair

its very essence (see *Shishkov v. Bulgaria*, no. 38822/97, §§ 82-90, ECHR 2003-I, and *Bochev*, cited above, § 70).

221. Furthermore, Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of applications for release from detention. Nevertheless, a State which institutes such a system must in principle accord detainees the same guarantees on appeal as at first instance (see *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224; *Rutten v. the Netherlands*, no. 32605/96, § 53, 24 July 2001; *Lanz v. Austria*, no. 24430/94, § 42, 31 January 2002; and *Svipsta v. Latvia*, no. 66820/01, § 129, ECHR 2006-III). The Court considers that the same applies in a system which provides for a constitutional complaint against decisions ordering and extending detention.

222. However, the Croatian system, although allowing for a constitutional complaint, leaves it to the Constitutional Court to await a fresh decision on extension of detention and then to declare the complaint against the previous decision on detention inadmissible. Thus, although the applicant lodged a constitutional complaint against three above-mentioned decisions of the Zagreb County Court, the Constitutional Court did not decide on the merits of any of these complaints but declared them all inadmissible because each time a fresh decision on the applicant's detention had been adopted in the meantime.

223. In the Court's opinion, the Constitutional Court's failure to decide on the applicant's constitutional complaints on the merits made it impossible to ensure the proper and meaningful functioning of the system for the review of his detention, as provided for by the national law. By declaring the applicant's constitutional complaints inadmissible simply because a fresh decision extending his detention had been adopted in the meantime, the Constitutional Court did not satisfy the requirement "that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy" (see *Peša v. Croatia*, no. 40523/08, § 126, 8 April 2010, and *Hađi v. Croatia*, no. 42998/08, § 47, 1 July 2010). Thus, that court fell short of its obligation under Article 5 § 4 of the Convention to review the lawfulness of the applicant's detention. There has accordingly been a violation of that provision.

(b) Failure of the appeal court and the Constitutional Court to respond to the applicant's arguments

224. The Court reiterates that arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in the sense of the Convention, of their deprivation of liberty. This means that the competent court has to examine "not only compliance with the procedural requirements set out in [domestic law] but also the reasonableness of the suspicion grounding the arrest and

the legitimacy of the purpose pursued by the arrest and the ensuing detention” (see the *Brogan and Others v. the United Kingdom*, 29 November 1988, § 65, Series A no. 145-B, and *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II).

225. Turning to the facts of the present case, the Court notes that in his appeal of 1 September 2008, and in his constitutional complaint of 21 September 2008, both lodged in respect of the decision by the Zagreb Municipal Court of 29 August 2008 extending his detention, the applicant, relying on Article 5 of the Convention, argued that the statutory maximum period for his detention had expired already on 19 June 2008 and that the conduct of the criminal proceedings against him by the lower court had fallen short of the requirement of efficiency.

226. He put forward these same arguments in his appeal of 16 October 2008 and his constitutional complaint of 5 November 2008, both in respect of a decision by the Zagreb Municipal Court of 10 October 2008 extending his detention.

227. He repeated the same arguments also in his appeal of 15 January 2009 and his constitutional complaint of 30 January 2009, both in respect of a decision by the Municipal Court of 12 January 2009 extending his detention.

228. However, although in each of these instances both the Zagreb County Court on appeal and the Constitutional Court examined the applicant’s appeals and constitutional complaints on the merits, they never made any comments on the above-stated arguments concerning the lawfulness of the applicant’s detention.

229. While Article 5 § 4 of the Convention does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant’s submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee and capable of putting in doubt the existence of the conditions that are essential for the “lawfulness”, in the sense of the Convention, of the deprivation of liberty (see *Nikolova*, cited above, § 61, and *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 209, 9 November 2010).

230. The applicant’s submissions in the above-mentioned appeals and constitutional complaints contained arguments connected with his rights guaranteed under Article 5 of the Convention, namely that the statutory maximum period for his detention had expired on 19 June 2008 and that the lower courts had failed to conduct the proceedings with the requisite speediness. These arguments did not appear implausible or frivolous. By not taking these submissions into account the appeal court and the Constitutional Court failed to provide judicial review of the scope and nature required by Article 5 § 4 of the Convention.

231. There has therefore been a violation of Article 5 § 4 of the Convention also in the above respect.

IV. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 and 3(c) OF THE CONVENTION

232. The applicant further complained that on two occasions he had been questioned by the police without the presence of a defence lawyer and that his trial had been unfair because his conviction had been based to a decisive degree on the confession he had made to the police. He relied on Article 6 §§ 1 and 3 (c) of the Convention, the relevant part of which reads:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

...”

A. Admissibility

1. As regards the applicant's questioning by the police on 20 June 2007

233. The Court notes that the applicant was arrested on 19 June 2007 at 9.30 p.m. in order to be interviewed by the police in connection with twenty-five counts of theft. However, the record of his questioning states that it started on 20 June 2007 at 3 p.m. At a hearing held on 22 September 2008 the applicant also stated that he had been questioned on the second day after his arrest, without specifying the time of his questioning. In his later statements and appeals the applicant repeatedly stated that he had been questioned by the police on 20 June 2007 without the presence of a defence lawyer. In support of his arguments he claimed that the lawyer S.S. had said that the questioning lasted about an hour, but in the applicant's view this could not have been sufficient for him to consult with a lawyer and give his defence orally in respect of twenty-five counts of theft and for the police officer to dictate and the typist to type the written record of his questioning.

234. However, the applicant never explained what, according to him, was the exact duration and manner of his questioning.

235. Furthermore, the lawyer S.S. expressly said that he had been present during the entire questioning on 20 June 2007, which had lasted for about an hour.

236. In these circumstances the Court finds that the applicant's complaint that on 20 June 2007 he had been questioned by the police without the presence of defence counsel is insufficiently substantiated.

237. Thus, in the light of all the material in its possession the Court finds that this part of the application does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

238. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

2. As regards the applicant's questioning by the police on 9 November 2005

(a) Exhaustion of domestic remedies

(i) The parties' arguments

239. The Government argued that the applicant had failed to exhaust domestic remedies because he had not lodged a complaint against the police officers in question, including a criminal complaint, or a complaint to the Croatian Bar Association in respect of the lawyers concerned.

240. The applicant maintained that he had exhausted all domestic remedies available in the context of the criminal proceedings against him.

(ii) The Court's assessment

241. The Court points to the general principles as stated in paragraphs 173 and 174 above.

242. The Court further notes that in respect of all issues pertaining to the fairness of criminal proceedings the defendants may lodge an appeal with an appeal court and a request for extraordinary review of a final judgment. In its judgment in *Maresti v. Croatia* (no. 55759/07, §§ 23-28, 25 June 2009) the Court accepted that such a request was a remedy to be exhausted, where it was allowed under the relevant provisions of the Code of Criminal Procedure, on the same grounds as those that an applicant is presenting before the Court. The relevant part of that judgment reads:

"23. The Court firstly observes that the actual name given to the proceedings in the domestic legal system or the fact that the national jurisdictions have considered them as an extraordinary remedy cannot be considered determinant: what is decisive is the nature and the scope of the proceedings at issue (see *San Leonard Band Club v. Malta*, no. 77562/01, § 41, ECHR 2004-IX). Furthermore, it is the Court's well-established practice that the proceedings following an appeal on points of law or an appeal for cassation fall within the scope of Article 6 § 1 of the Convention (see, for

example, *H.E. v. Austria*, no. 33505/96, §§ 14 and 18, 11 July 2002, and *Cobianchi v. Italy (no. 1)*, no. 43434/98, §§ 8 and 11, 9 November 2000).

...

25. ... As to the nature of the proceedings following a request for extraordinary review of a final judgment in a criminal case, the Court observes that the Croatian Supreme Court may, if it finds the request well-founded, quash the lower courts' judgments and remit the case, or in certain cases even decide the case itself. The reasons justifying extraordinary review of a final judgment are expressly enumerated in Article 427 of the Code of Criminal Procedure and are not subject to any discretionary decision of the court. The remedy is available only to the defendant (not to the prosecution) for strictly limited errors of law that operate to the defendant's detriment and is subject to a strict one-month time limit following the service of the judgment on the defendant.

26. The request for extraordinary review has its equivalent in civil proceedings in the form of an appeal on points of law to the Supreme Court (*revizija*), which is also lodged against a final judgment. In this connection, the Court notes that it has already found that Article 6 is applicable to proceedings concerning such an appeal (see *Debelić v. Croatia*, no. 2448/03, §§ 21 and 22, 26 May 2005). As to the criminal-law remedy at issue, the Court has in a previous case (*Kovač v. Croatia* (no. 503/05, 12 July 2007)) taken into consideration proceedings before the Supreme Court concerning a request for extraordinary review of a final judgment by a defendant in a criminal case.

27. ... The Court notes that the applicant's request was made on one of the prescribed grounds for finding an infringement of the Criminal Code ..."

243. As regards the present case, the Court notes that the applicant lodged an appeal against the first-instance judgment of the Zagreb Municipal Court. After his appeal had been dismissed by the Zagreb County Court, the applicant lodged a request for an extraordinary review of a final judgment with the Supreme Court.

244. In his request for an extraordinary review, the applicant complained that his statements given to the police on two occasions constituted unlawful evidence because he had been questioned without the presence of a lawyer and that, as such, those statements should not have been used by the trial court. In this connection the Court notes that one of the grounds under Article 427 of the Code of Criminal Procedure, together with Article 367(2) and Article 9 of the same Code, for lodging such a request exists when a conviction has been based on unlawfully obtained evidence, and that this was exactly the applicant's claim.

245. In these circumstances, the Court concludes that the proceedings following the request for extraordinary review of the final judgment were decisive for the determination of a criminal charge against the applicant and so fall within the scope of Article 6 § 1 and that the applicant has properly exhausted regular domestic remedies that were available in the context of the criminal proceedings against him. He, therefore, did not need to exhaust

any further remedies. Accordingly, the Government's objection must be dismissed.

246. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

247. The applicant argued that he had been questioned by the police without the assistance of a lawyer and that his confession thus obtained had been fabricated by the police. Despite the fact that he had repeatedly complained about that situation before the national courts, showing that the lawyer E.Č. had not been present at his questioning by the police, as was apparent from the discrepancy between the time when the police record had been drawn up and the time when he, the applicant, had been taken from Zagreb Prison to the police interview, the national courts had nevertheless based his conviction on his alleged confession.

248. The Government argued that the applicant had had a fair trial and that the applicant's confession before the police had not been the only evidence proving his guilt, since the trial court had heard evidence from a number of injured parties and their statements had been consistent with the applicant's confession.

249. The trial court had also heard evidence from the police officers and the lawyer implicated and had established that the applicant had been questioned by the police on 2 November 2005 in the presence of lawyer E.Č.

2. The Court's assessment

(a) Questioning of the applicant by the police

(i) General principles

250. The relevant principles have been set forth in the Grand Chamber judgment in *Salduz v. Turkey* ([GC], no. 36391/02, 27 November 2008), as follows:

"50. The Court reiterates that, even if the primary purpose of Article 6, as far as criminal proceedings are concerned, is to ensure a fair trial by a 'tribunal' competent to determine 'any criminal charge', it does not follow that the Article has no application to pre-trial proceedings. Thus, Article 6 - especially paragraph 3 - may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (*Imbrioscia*,

cited above, § 36). As the Court has already held in its previous judgments, the right set out in paragraph 3 (c) of Article 6 of the Convention is one element, amongst others, of the concept of a fair trial in criminal proceedings contained in paragraph 1 (*Imbrioscia*, cited above, § 37, and *Brennan*, cited above, § 45).

51. The Court further reiterates that although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of fair trial (*Poitrimol v. France*, 23 November 1993, § 34, Series A no. 277-A, and *Demebukov v. Bulgaria*, no. 68020/01, § 50, 28 February 2008). Nevertheless, Article 6 § 3 (c) does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial. In this respect, it must be remembered that the Convention is designed to 'guarantee not rights that are theoretical or illusory but rights that are practical and effective' and that assigning counsel does not in itself ensure the effectiveness of the assistance he may afford an accused (*Imbrioscia*, cited above, § 38).

52. National laws may attach consequences to the attitude of an accused at the initial stages of police interrogation which are decisive for the prospects of the defence in any subsequent criminal proceedings. In such circumstances, Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation. However, this right has so far been considered capable of being subject to restrictions for good cause. The question, in each case, has therefore been whether the restriction was justified and, if so, whether, in the light of the entirety of the proceedings, it has not deprived the accused of a fair hearing, for even a justified restriction is capable of doing so in certain circumstances (see *John Murray*, cited above, § 63; *Brennan*, cited above, § 45, and *Magee*, cited above, § 44).

53. These principles, outlined in paragraph 52 above, are also in line with the generally recognised international human rights standards (see paragraphs 37-42 above) which are at the core of the concept of a fair trial and whose rationale relates in particular to the protection of the accused against abusive coercion on the part of the authorities. They also contribute to the prevention of miscarriages of justice and the fulfilment of the aims of Article 6, notably equality of arms between the investigating or prosecuting authorities and the accused.

54. In this respect, the Court underlines the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial (*Can v. Austria*, no. 9300/81, Commission's report of 12 July 1984, § 50, Series A no. 96). At the same time, an accused often finds himself in a particularly vulnerable position at that stage of the proceedings, the effect of which is amplified by the fact that legislation on criminal procedure tends to become increasingly complex, notably with respect to the rules governing the gathering and use of evidence. In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer whose task it is, among other things, to help to ensure respect of the right of an accused not to incriminate himself. This right indeed presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see *Jalloh v. Germany* [GC], no. 54810/00, § 100,

ECHR 2006-..., and *Kolu v. Turkey*, no. 35811/97, § 51, 2 August 2005). Early access to a lawyer is part of the procedural safeguards to which the Court will have particular regard when examining whether a procedure has extinguished the very essence of the privilege against self-incrimination (see, *mutatis mutandis*, *Jalloh*, cited above, § 101). In this connection, the Court also notes the recommendations of the CPT (paragraphs 39-40 above), in which the committee repeatedly stated that the right of a detainee to have access to legal advice is a fundamental safeguard against ill-treatment. Any exception to the enjoyment of this right should be clearly circumscribed and its application strictly limited in time. These principles are particularly called for in the case of serious charges, for it is in the face of the heaviest penalties that respect for the right to a fair trial is to be ensured to the highest possible degree by democratic societies.

55. Against this background, the Court finds that in order for the right to a fair trial to remain sufficiently 'practical and effective' (see paragraph 51 above) Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6 (see, *mutatis mutandis*, *Magee*, cited above, § 44). The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction."

(ii) Application of the above principles in the present case

251. The Court notes that the record of the applicant's questioning bears the date 2 November 2005. However, according to the findings of the national courts the questioning took place on 9 November 2005 and the date 2 November 2005 was a clerical error (see above, paragraph 138).

252. The Court further notes that in the written record of the applicant's questioning it is recorded that lawyer E.Č. was called by the police at 12.30 p.m. and that the interview ended on 1.30 p.m. on 2 November 2005, which should presumably read 9 November 2005.

253. However, whichever was the case, whether the lawyer E.Č. was allegedly present between 12.30 p.m. and 1.30 p.m. either on 2 or 9 November 2005, the Court finds that he could not have attended the applicant's questioning by the police for the following reasons.

254. According to the letter of 16 February 2009 from the Zagreb Prison Governor, the applicant, who was in Zagreb Prison at the time, was taken out of that prison for questioning in the Fifth Police Station on 9 November 2005 between 9.25 a.m. and 11.25 a.m. (see above, paragraph 134). This was also accepted by the national courts. Thus it follows that lawyer E.Č. was not present during the applicant's questioning, since he was called by the police at 12.30 p.m., and even assuming that he arrived immediately at the Fifth Police Station, at that time the applicant had already been returned to Zagreb Prison.

255. The question now remains whether the applicant waived his right to legal counsel. In this connection the Court reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial (see *Kwiatkowska v. Italy* (dec.), no. 52868/99, 30 November 2000). However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-...; *Kolu*, cited above, § 53; and *Colozza v. Italy*, 12 February 1985, § 28, Series A no. 89).

256. In this connection the Court first observes that the applicant in the present case complained from the initial stages of the proceedings about the lack of legal assistance during his initial police questioning. Furthermore, the Government have not claimed that the applicant waived his right to be legally represented during the police questioning. The Court therefore concludes that the applicant did not waive his right to legal assistance during the police interview.

257. Against this background the Court finds that there has been a violation of Article 6 §§ 1 and 3(c) of the Convention on account of the applicant's questioning by the police on 9 November 2005 without the presence of a defence lawyer.

(b) Use of the applicant's alleged confession to the police in his criminal trial

258. The applicant further complained that the fact that his conviction was based on his alleged confession given to the police without the presence of defence counsel ran counter to the guarantees of a fair trial under Article 6 § 1 of the Convention.

259. The Court reiterates that its duty, according to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140).

260. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence - for example, evidence obtained unlawfully in terms of domestic law - may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question ... (see *Khan v. the United Kingdom*,

no. 35394/97, § 34, ECHR 2000-V, and *Lisica v. Croatia*, no. 20100/06, § 48, 25 February 2010).

261. In the light of the above principles, the Court must determine whether the domestic courts' admission of statements obtained in the absence of a lawyer during the applicant's questioning by the police impaired his right to a fair hearing.

262. The Court notes that during the entire criminal proceedings in question the applicant was unequivocal in his defence submissions that the content of his alleged confession to the police had been fabricated by the police. The Government denied these allegations and invoked the national courts' findings. The national courts based their conclusion that the applicant was questioned in a lawyer's presence on the fact that a statement to this effect had been given by State officials who had a duty to act in accordance with the laws well known to them. However, the Court cannot endorse such a conclusion in the light of the fact that the national courts failed to examine the obvious discrepancy between the alleged time of the presence of lawyer E.Č. and the time of the applicant's actual questioning (see above, paragraphs 255 and 256).

263. The applicant had access to a lawyer after being remanded in custody and during the ensuing criminal proceedings; he thus had the opportunity to challenge the prosecution's arguments. Nevertheless, as noted above, in convicting the applicant the domestic courts admitted in evidence statements which the applicant had subsequently retracted and which had been obtained during police custody in the absence of a lawyer. They based the applicant's conviction to a significant degree on this evidence. Thus, in the present case, the applicant was undoubtedly affected by the restrictions on his access to a lawyer. Neither the assistance provided subsequently by a lawyer, nor the adversarial nature of the ensuing proceedings, could remedy the defects which had occurred during the applicant's custody (see *Salduz*, cited above, § 58; *Amutgan v. Turkey*, no. 5138/04, § 18, 3 February 2009; and *Dayanan v. Turkey*, no. 7377/03, § 33, ECHR 2009-...).

264. In view of the foregoing, even though the applicant had the opportunity to challenge the evidence against him at the trial and subsequently on appeal, the admission of dubious evidence into the case file affected the applicant's right to a fair trial to a degree incompatible with the requirements of Article 6 of the Convention.

265. There has accordingly also been a violation of Article 6 § 1 of the Convention on account of the admission of evidence given by the applicant to the police without the presence of defence counsel and the reliance on that evidence for the applicant's conviction.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

266. Lastly, the applicant complained under Article 6 § 2 of the Convention that, by ordering his detention, the national courts had shown that they had actually considered him guilty of the offences he had been charged with, and under Article 14 of the Convention that he was discriminated against on the basis of his social status, alleging that the measure of detention had been ordered against him because he had no property.

267. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3(a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

268. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

269. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

270. The Government considered that claim unfounded and in any event excessive.

271. The Court considers that the applicant suffered non-pecuniary damage as a result of the violations found. The damage cannot be sufficiently compensated for by a finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

272. The Court also considers it necessary to point out that a judgment in which it finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for the consequences of its violation in such a way as to restore as

far as possible the situation existing before the breach. In the case of a violation of Article 6 of the Convention, applicants should, to the fullest extent possible, be put in the position they would have been in had the requirements of the Convention not been disregarded (see *Yanakiev v. Bulgaria*, no. 40476/98, § 89, 10 August 2006, and *Putter v. Bulgaria*, no. 38780/02, § 61, 2 December 2010).

273. The Court notes that Article 430 of the Code of Criminal Procedure provides for the possibility of reopening domestic proceedings if the Court has found a violation of the Convention.

B. Costs and expenses

274. The applicant also claimed EUR 2,000 for the costs and expenses incurred before the Court.

275. The Government considered that claim excessive.

276. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award in full the sum claimed for the proceedings before the Court, plus any tax that may be chargeable on this amount.

C. Default interest

277. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Articles 5 §§ 1, 3, and 4, and the complaints under Article 6 §§ 1 and 3(c) of the Convention, admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that it is not necessary to examine the complaint under Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention, both in respect of the Constitutional Court's decisions declaring the

applicant's constitutional complaints about his detention inadmissible and in respect of the failure of the appeal court and the Constitutional Court to address the applicant's arguments that the statutory maximum period for his detention had expired and that the conduct of the proceedings by the lower courts was inefficient;

5. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account both of the applicant's questioning by the police on 2 or 9 November 2005 without the presence of a defence lawyer and of the use of his confession thus obtained in his criminal trial;
6. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas at the rate applicable at the date of settlement:
 - (i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Anatoly Kovler
President